

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4655 of 1999

to

SPECIAL CIVIL APPLICATION No 4665 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

UNION OF INDIA

Versus

FATAJI CHATURJI

Appearance:

1. Special Civil Application No. 4655 of 1999
MR UM SHASTRI for Petitioner No. 1-2
MR JC SHETH for Petitioner No. 1-2
MR GM JOSHI for Respondent No. 1
-

CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 28/02/2005

CAV JUDGEMENT

#. As common question of facts and law arise in all these petitions, they are disposed of by this common judgment.

#. These petitions are filed against the judgment and award passed by the Labour Court, Ahmedabad in Recovery Application Nos. 1 to 11 of 1989 on 05.06.1999, whereby the learned Labour Court has directed the petitioners herein to pay to the opponents herein the amount of difference of payment of salary not paid to them in the Recovery Applications preferred by the opponents herein.

#. It is the case of the petitioners that the opponents filed the Recovery Applications before the Labour Court on the ground that they were working on the basis of daily wages, but as they were working for a long time and as they were workers with temporary status, they are entitled to the new scale payment from 01.01.1975 to 01.01.1986 and as such they are entitled for the difference of the amount payable as per the new scale and the payment made. The petitioners resisted the claim on the ground that they are not having the temporary status as claimed and therefore without proving the status, the recovery applications are not maintainable and the Labour Court has no jurisdiction to determine the status for becoming eligible for the claim. The Labour Court, by award dated 05.06.1999, passed the award as stated above in the said Recovery Applications. Therefore, this petition is filed against the said award dated 05.06.1999.

#. At the time of arguments, learned advocate for the petitioners submitted that as the claim of the workmen is not adjudicated or recognized by the employer in any Award of settlement, the Recovery Applications are not maintainable. The Recovery Applications under Section 33(c)(2) are in the nature of Execution Proceedings and when the status of claiming the same is challenged, the remedy under Recovery proceedings is not available and therefore prayed for allowing these petitions by quashing and setting aside the judgment dated 05.06.1999 passed in Recovery Application Nos. 1 to 11 of 1989.

#. Against these submissions, learned advocate for the respondents submitted that these opponents were having scale of Rs.70-85 while similarly situated other persons were in the scale of Rs.196-232 and also that they were not paid yearly increment for the year 1968 to 1971 which has affected upon the fixation of pay in revised scale

since 1.1.1973 and in scale from 1.1.1986. It is submitted that the temporary status was granted to the opponents from 1.3.1971 while they were entitled for the same from 1968. He further submitted that the Labour Court has jurisdiction to try Recovery Applications under Section 33(c)(2) of the I.D.Act and therefore, this Court is not required to interfere with the award passed by the Labour Court and requested for dismissal of these petitions. In support of his submissions, he has relied on the following authorities :

1. Dhirendra Chamoli and another V/s State of U.P. reported in (1986) 1 SCC 637.
2. The Canara Bank Ltd. V/s Anant Narayan Surkund and others reported in 1964(3) SCR 256.
3. Randhir Singh V/s Union of India and others reported in (1982) 1 SCC 618.
4. Municipal Corporation of Delhi V/s Ganesh Razak and another reported in 1994 L.A.B.I.C. 733.
5. National Buildings Construction Corporation V/s Pritam Singh Gill and others reported in (1972) 2 SCC 1.

#. Heard the learned advocates for the parties and perused the authorities. In my opinion, all these petitions are required to be dismissed as the Hon'ble Apex Court has, in number of cases, decided that Labour Court has jurisdiction to decide the proceedings under Section 33(c)(2) of the I.D.Act. Further, the Labour Court, in its judgment and award referred to a decision in Recovery Application No. 44 of 1982, wherein it was held that the amount of difference should be paid to the applicants within a period of three months. That matter also pertained to the difference to be paid to casual workers and all the temporary workers were covered by that judgment. The Labour Court, taking into consideration, all these aspects decided the Recovery Applications. In my opinion, no interference is required by this Court in the said judgment and award passed by the Labour Court.

#. In view of the aforesaid, these petitions are required to be dismissed and are dismissed accordingly. Rule discharged.

(SHARAD D DAVE, J)
srilatha